CASE NUMBER S96G1914

IN THE SUPREME COURT

OF GEORGIA

VERNITA MICHELLE SMITH,
Appellant

V.

STATE OF GEORGIA,
Appellee

ON CERTIORARI

BRIEF OF *AMICI CURIAE* URGING REVERSAL OF THE JUDGMENT BELOW

GEORGIA INDIGENT DEFENSE COUNCIL
GEORGIA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
NATIONAL CLEARINGHOUSE FOR THE DEFENSE OF BATTERED WOMEN
UNIVERSITY OF GEORGIA SCHOOL OF LAW PROTECTIVE ORDER PROJECT
GEORGIA COALITION ON FAMILY VIOLENCE

Attorneys for *Amici*:

JAMES C. BONNER, JR. (067400)
GEORGIA INDIGENT DEFENSE COUNCIL
985 Ponce de Leon Avenue
Atlanta, Georgia 30306
Telephone (404) 894-2595

NICHOLAS A. LOTITO (458150)
GEORGIA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
918 Ponce de Leon Avenue, NE
Atlanta, GA 30306
Telephone (404) 688-2000

JILL M. SPECTOR
NATIONAL CLEARINGHOUSE FOR THE DEFENSE OF BATTERED WOMEN
125 South 9th Street, Suite 302
Philadelphia, Pennsylvania 19107
Telephone (215) 351-0010

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

I. INTERESTS OF *AMICI CURIAE* 1

II. STATEMENT OF THE CASE 4

III. CERTIFIED QUESTION 7

IV. ISSUES ADDRESSED BY *AMICI* 7

V. ARGUMENTS AND CITATIONS OF AUTHORITY 8

A. The trial court deprived the Appellant of proper consideration of her defense by failing to instruct the jury clearly, in accordance with established case law and OCGA §16-3-21(d), that in assessing self-defense it should consider her circumstances, including her abuse at the hands of the decedent and its effects, as presented through lay and expert witnesses 8

1. Under established Georgia law, the jury must consider the defendant's circumstances in assessing self-defense, including the history of abuse by the decedent and its effects, as explained through lay and expert testimony 8

2. This Court, particularly in view of the enactment of OCGA §16-3-21(d), should reconsider its reasons for discouraging specific instructions which would materially aid the jury in properly assessing a claim of self-defense in light of evidence of battering and its effects. 13

3. The trial court's failure to instruct the jury clearly that--in assessing self-defense--it should consider the Appellant's circumstances, including her abuse at the hands of the decedent, as presented through lay and expert witnesses, deprived her of proper consideration of her defense. 16

4. On timely request, the Appellant was entitled to correct, specific instructions pertinent to her defense which would have materially aided the jury. 20

5. The instructions as a whole were erroneous because they limited the jury's consideration of all the evidence relevant to the claim of self-defense. 25

B. Other jurisdictions have also recognized the need for the jury to be instructed as to the relevance of evidence concerning abuse. 29

VI. CONCLUSION 31

TABLE OF AUTHORITIES

Cases

Alexander v. State, 8 Ga. App. 531, 69 S.E. 917 (1911) 9, 21, 24, 25, 27
Allison v. State, 256 Ga. 851, 353 S.E.2d 805 (1987) 11
Atlantic C. L. R. Co. v. Anderson, 75 Ga.App. 829, 44 S.E.2d 576 (1947) 21
Bechtel v. State, 840 P.2d 1 (Okla. Cr. App. 1992) 10
Bivins v. State, 200 Ga. 729, 38 S.E.2d 273 (1946) 9
Blankenship v. W. Ga. Plumbing Supply, 213 Ga. App. 275, 444 S.E.2d 596 (1994) 21
Brooks v. State, 128 Ga. 261, 57 S.E. 483 (1907) 21
Brown v. State, 223 Ga. 76, 153 S.E.2d 709 (1967) 9
Bruno v. United States, 308 U.S. 287, 60 S.Ct. 198, 84 L.Ed. 257 (1939)) 14
Central of G. R. Co. v. Goodman, 119 Ga. 234, 45 S.E. 969 (1903) 21
Chandler v. State, 261 Ga. 402, 407, 405 S.E.2d 669 (1991) 9, 27
Chapman v. State, 258 Ga. 214, 367 S.E.2d 541 (1988) 11, 14, 16, 17, 27, 28
Chester v. State, 267 Ga. 9, 471 S.E.2d 836 (1996) 13, 16
Clenney v. State, 256 Ga. 116, 344 S.E.2d 216 (1986) 9, 27
Commonwealth v. Grove, 363 Pa. Super. 328, 526 A.2d 369 (1987) 29
Commonwealth v. Rodriguez, 633 N.E.2d 1039 (Mass. 1994) 10
Commonwealth v. Stonehouse, 521 Pa. 41, 555 A.2d 772 (1989) 29
Commonwealth v. Watson, 494 Pa. 467, 431 A.2d 949 (1981) 30
Daniels v. State, 248 Ga. 591, 285 S.E.2d 516 (1981) 9, 27
Dunn v. Roberts, 963 F.2d 308 (10th Cir. 1992) 10
Ex parte Haney, 603 So. 2d 412 (Ala. 1992) 10
Fennell v. Goolsby, 630 F. Supp. 451 (E.D. Pa. 1985) 10
Fielder v. State, 756 S.W.2d 309 (Tex. Cr. App. 1988) 10
Ham v. Preston, 164 Ga. 682, 139 S.E. 421 (1927) 21
Haynes v. State, 17 Ga. 465, 483 (1855) 21
Henderson v. State, 234 Ga. 827, 218 S.E.2d 612 (1975) 9, 27
Ibn-Tamas v. United States, 407 A.2d 626 (D.C. App. 1979) 10

In the Matter of Nicole V., 71 N.Y.2d 112, 518 N.E.2d 914 (1987) 10
Jackson v. State, 239 Ga. 40, 235 S.E.2d 477 (1977) 9
Johnson v. State, 266 Ga. 624, 469 S.E.2d 152 (1996) 9
Jones v. Lowman, 85 Ga. App. 743, 70 S.E.2d 122 (1952) 21
Lolley v. State, 259 Ga. 605, 385 S.E.2d 285 (1989) 9
Lynn v. State, 162 Ga. App. 437, 291 S.E.2d 572 (1982) 9
McDonald v. State, 182 Ga. App. 509, 356 S.E.2d 264 (1987) 10, 27
Metropolitan S. R. Co. v. Johnson, 90 Ga. 500, 16 S.E. 49 (1892) 30
Milton v. State, 245 Ga. 20, 262 S.E.2d 789 (1980) 9, 25, 27
Moore v. State, 176 Ga. App. 490, 336 S.E.2d 365 (1985) 9
Moore v. State, 228 Ga. 662, 187 S.E.2d 277 (1972) 9
Motes v. State, 192 Ga. App. 302, 384 S.E.2d 463, 466 (1989) 11, 27
People v. Fleming, 155 Ill. App. 3d 29, 507 N.E.2d 954 (1987), *rev'd on other grounds, sub nom. U.S. ex rel. Fleming v. Huch*, 924 F.2d 679 (7th Cir. 1991) 10
People v. Humphrey, 921 P.2d 1, 7, n.3 (1996) 8, 30
People v. Minnis, 118 Ill. App. 3d 345, 455 N.E.2d 209 (1983) 10
Pugh v. State, 260 Ga. 874, 401 S.E.2d 270 (1991) 11, 14, 27
Rembert v. State, 76 Ga. App. 254, 45 S.E.2d 798 (1947) 21
Roberts v. State, 114 Ga. 450, 40 S.E. 297 (1901) 21, 23, 24
Rowe v. Cole, 176 Ga. 592, 168 S.E. 882 (1933) 21, 22
Sawyer v. State, 161 Ga. App. 479, 288 S.E.2d 108 (1982) 10, 27
Selman v. State, 267 Ga. 198, 475 S.E.2d 892 (1996) 12
Slade & Etheridge v. Pascal, 67 Ga. 541 (1881) 21
Smith v. State, 222 Ga. App. 412, 474 S.E.2d 291 (1996) 7
Smith v. State, 247 Ga. 612, 277 S.E.2d 678 (1981) 10, 11, 18, 19, 27, 28
Smoky v. McCray, 196 Ga. App. 650, 396 S.E.2d 794 (1990) (*en banc*) 22, 23
State v. Allery, 101 Wash. 2d 591, 682 P.2d 312 (1984) 10
State v. Anaya, 438 A.2d 892 (Me. 1981) 10
State v. Baker, 120 N.H. 773. 424 A.2d 171 (1980) 10

State v. Bednarz, 179 Wis. 2d 460, 507 N.W.2d 168 (Wis. App. 1993) 10
State v. Borrelli, 227 Conn. 153, 629 A.2d 1105 (1993) 10
State v. Cababag, 9 Haw. App. 496, 850 P.2d 716 (1993) 10
State v. Clements, 244 Kan. 411, 770 P.2d 447 (1989) 10
State v. Crawford, 253 Kan. 629, 861 P.2d 791 (1993) 10
State v. Eng, No. 14015, slip op. (Ohio App. 2d filed Sept. 30, 1994) 30
State v. Gallegos, 104 N.M. 247, 719 P.2d 1268 (1986) 10
State v. Hennum, 441 N.W.2d 793 (Minn. 1989) (*en banc*) 10
State v. Hess, 252 Mont. 205, 828 P.2d 382 (1992), *reh'g. den.* 3/31/92 10
State v. Hill, 287 S.C. 398, 339 S.E.2d 121 (1986) 10
State v. Kelly, 97 N.J. 178, 478 A.2d 364 (1984) 10, 18
State v. Koss, 49 Ohio St. 3d 213, 551 N.E.2d 970 (1990) 10
State v. Moore, 72 Ore. App. 454, 695 P.2d 985 (1985) 10
State v. Stewart, 243 Kan. 639, 763 P.2d 572 (1988) 10
State v. Thomas, 77 Ohio St.3d 323, 673 N.E.2d 1339 (1997) 30
Stribling v. State, 6 Ga. App. 864, 65 S.E. 1068 (1909) 24
Terry v. State, 467 So. 2d 761 (Fla. App. 4 Dist. 1985) 10
Thomas v. State, 95 Ga. App. 699, 99 S.E.2d 242 (1957) 21
Thompson v. Thompson, 77 Ga. 692, 3 S.E. 261 (1887) 21, 22
Truitt v. State, 90 Ga. App. 181, 82 S.E.2d 166 (1954) 9, 27
United States v. Winters, 729 F.2d 602 (9th Cir. 1984) 10
Weldon v. State, 84 Ga. App. 634, 66 S.E.2d 920 (1951) 9
Werk v. Big Bunker Hill Mining Corp., 193 Ga. 217, 17 S.E.2d 825 (1941) 22
White v. State, 242 Ga. 21, 247 S.E.2d 759 (1978) 25
Witt v. State, 1995 Wyo. LEXIS 49, 892 P.2d 132 (1995) 29

Statutes

CAL. EVID. CODE §1107 (West 1993) 11

LA. CODE EVID. ANN. art. 404(A)(2) (West 1989) 8, 11

MASS. GEN. LAWS ANN. ch. 233, §23E (West 1994) 8, 11

MD. CTS. & JUD. PROC. CODE ANN. §10-916 (1991) 11

MO. ANN. STAT. (Crimes & Punishment) §563.033 (Vernon 1991) 11

NEV. REV. STAT. §48.061 (1993) 8, 11

OCGA §16-3-21(d) 7, 11-14, 27, 28

OHIO REV. CODE ANN. §§2901.06, 2945.392 (Anderson 1990) 11

OKLA. STAT. ANN. tit. 22, 40.7 (West 1992) 8, 11

S.C. CODE ANN. §17-23-170 (Law. Co-op. 1995) 11

TEX. PENAL CODE ANN. §19.06 (West 1992) 11

VA. CODE §19.2-270.6 (1993) 11

WYO. STAT. (Crimes & Offenses) §6-1-203 (1993) 11

Other Authorities

Georgia Council of Superior Court Judges, *Suggested Pattern Criminal Jury Instructions,* vol. II (2nd ed. 1991) 25

NATIONAL INSTITUTE OF JUSTICE, DEPARTMENT OF JUSTICE, THE VALIDITY AND USE OF EVIDENCE CONCERNING BATTERING AND ITS EFFECTS IN CRIMINAL TRIALS: REPORT RESPONDING TO SECTION 40507 OF THE VIOLENCE AGAINST WOMEN ACT, NCJ 160972 (May 1996) 8

Parrish, Janet, *Trend Analysis: Expert Testimony on Battering and Its Effects in Criminal Cases* (November 1994) 11

Articles

Dutton, Mary Ann, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191 (1993) 8, 19

Maguigan, Holly, *Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals*, 140 U. PA. L. REV. 379, 388 (1991) 13

Mahoney, Martha, *Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1 (1991) 18, 20

Mahoney, Martha, *Victimization or Oppression? Women's Lives, Violence, and Agency, The Public Nature of Private Violence* (Fineman and Mykitiuk, eds., 1994) 18

Mahoney, Martha, *Exit: Power and the Idea of Leaving in Love, Work, and the Confirmation Hearings*, 65 S. CAL. L. REV. 1283, 1285 (1992) 18

Schneider, Elizabeth M., *Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense*, 15 HARV. C.R.-C.L. L. REV. 623 (1980) 17

Schuller, Regina A., Vicki L. Smith & James M. Olson, *Jurors' Decisions in Trials of Battered Women Who Kill: The Role of Prior Beliefs and Expert Testimony*, 24 J. APP. SOC. PSYCH. 316 (1994) 17, 18

Stark, Evan, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973, 975-76 (1995) 82

Books

Walker, Lenore E., *The Battered Woman* (1979) 81

Walker, Lenore E., *The Battered Woman Syndrome* (1984) 139

I. INTERESTS OF *AMICI CURIAE*

Amici curiae are various nonprofit organizations that represent the interests of battered women and criminal defendants. Given the nature of their organizations and the work that they do, *Amici* are particularly qualified to provide assistance to this Court and to offer an informative perspective on the issues presented in this case. *Amici* are committed to ensuring that battered women defendants, like all criminal defendants, receive fair trials.

GEORGIA INDIGENT DEFENSE COUNCIL

The Georgia Indigent Defense Council, established in 1979 by OCGA §17-12-30, is the primary state agency charged with securing criminal defense services to Georgia's poorest citizens. As such, it has institutional interests in criminal law issues which have ramifications wider than the particular case in which they have arisen and which have a significant potential to affect the administration of criminal justice in Georgia. This appeal involves such an issue.

NATIONAL CLEARINGHOUSE FOR THE DEFENSE OF BATTERED WOMEN

The National Clearinghouse for the Defense of Battered Women was founded in 1987 and is incorporated in the Commonwealth of Pennsylvania. The National Clearinghouse works to assure justice for battered women charged with crimes who, after years of abuse, kill their batterer in self-defense, are coerced into crime by their batterer, or are unable to protect their children from their batterer. The National Clearinghouse is the first and only national resource and advocacy organization that provides technical assistance and information to battered women defendants, defense attorneys, battered women's advocates, expert witnesses and other professionals and members of the community.

The National Clearinghouse does not advocate any special legal rules for battered women defendants, but rather works to ensure that they have the same rights and protections as all other criminal defendants, including the opportunity to have the jury consider all relevant evidence. This evidence often includes lay and expert testimony about the abuse that the defendant suffered at the hands of the decedent, the dynamics of the abusive relationship, and the cumulative psychological effects of the abuse. This testimony assists the jury in assessing the self-defense claim, unencumbered by prevailing myths and misperceptions about battered women. In order to understand and consider this testimony properly to assess self-defense and reach a fair verdict under the law, jurors must be given clear and accurate jury instructions regarding the purposes for which the testimony is admitted and its relevance to the self-defense claim.

GEORGIA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

Georgia Association of Criminal Defense Lawyers (GACDL) is a nonprofit corporation organized in 1974, with more than 1200 Georgia criminal defense lawyer members. GACDL is the only Georgia association of private and public defense counsel. It is dedicated to the preservation and improvement of our adversary system of justice and to a reasoned and informed advancement of criminal procedure and jurisprudence. We believe that, as an association, we can speak better than anyone for those lawyers in Georgia who undertake the awesome responsibility of defending citizens accused of a crime.

A fundamental purpose of GACDL is to promote the proper administration of criminal justice. GACDL seeks to file briefs in cases addressing from the defense perspective issues deemed to be of general interest and importance to the advancement of criminal justice. Over the

past several years, GACDL has filed dozens of briefs in this Court, the Georgia Court of Appeals, and the federal appellate courts, addressing a wide range of substantive, procedural and evidentiary issues. Given the important nature of the issues presented in this appeal, GACDL's Amicus and Executive Committees submit this brief in the interest of a fair and impartial dispensation of criminal justice to all citizens accused of crimes.

UNIVERSITY OF GEORGIA SCHOOL OF LAW PROTECTIVE ORDER PROJECT

The Protective Order Project (the Project) was established in 1994 to provide free legal services to women victims of domestic abuse seeking temporary protective orders under Georgia's Family Violence Act. The Project is funded by the National Association for Public Interest Law and the University of Georgia School of Law. The Project concentrates its legal services on protective orders in an attempt to reduce the chances that women may find themselves in the position of having to use violence against their abusers. The Project realizes, however, that not all women have access to services such as ours, so this appeal is of great interest to us. The Project hopes this Court will guarantee that all women have access to fair justice by having the opportunity to have a jury properly consider any testimony offered on their behalf.

GEORGIA COALITION ON FAMILY VIOLENCE

The Georgia Coalition on Family Violence (GCFV) is a nonprofit organization incorporated in the state of Georgia. Founded in 1981, the Georgia Coalition on Family Violence is a membership organization which serves as a statewide coalition of 31 of the state's domestic violence programs/shelters who share the goal of stopping violence against women and their children. GCFV member programs provide a wide spectrum of services to victims of domestic

violence such as information and referral, advocacy, technical assistance to shelter programs, and public policy work on behalf of victims of domestic violence.

We know, based upon our work and the work of our member programs, that many people continue to misapprehend the real danger and the terror that battered women experience in their relationships with their abusers. We also understand how important it is for juries to understand the realities of domestic violence and its effects on battered women. Most importantly in this case, we understand that in order for a battered woman defendant claiming self-defense to have a fair trial, the jurors must be properly instructed how to utilize the evidence about the decedent's history of violence to evaluate her justification defense claim.

II. STATEMENT OF THE CASE

Vernita Michelle Smith fired a shot that killed her husband as they argued and fought in the family trailer. She had gone there to get seizure medication and other necessities so that she could take her severely handicapped son, who had just had a seizure, to the hospital emergency room. While in the trailer, the decedent confronted her, questioning her about why she had earlier been talking to her cousin and a man in the housing projects. He then hit her in the mouth, hard enough to make it bleed and to cause the bottle of seizure medication to break. After taunting her about a prior incident where her brother rescued her as decedent choked her with a clock cord, he continued his threats, raising a starch can above his head. After he hit her a second time, Appellant retrieved a gun and shot him.

The decedent's abuse of Appellant at the time of the incident was but one episode in a long pattern of brutality. Appellant presented abundant evidence at trial, including her own testimony,

that he had abused her over a number of years, both before and during their marriage. The abuse included such things as choking her until she lost consciousness, putting a gun to her head, and threatening to take her son away. Additionally, she was aware that decedent, using only his hands and feet, had beaten a man so severely that he inflicted permanent paralysis and as a consequence was on probation for aggravated battery.[1]

Appellant also presented the testimony of Dr. Marti Loring, whom the trial court qualified as an expert in the field of battered women (Tr. 448). Dr. Loring explained to the jury some of the dynamics of abusive relationships, which she called "battered woman syndrome." She described the effects of battering, including the defendant's ongoing fear and terror of the batterer and the fact that is it not unusual for battered women to stay in abusive relationships (Tr. 455-56, 460). In her opinion, Appellant was a "battered woman" who exhibited characteristics of "battered woman syndrome" (Tr. 459-61).

The trial court gave the jury generic instructions on the Appellant's justification defense (Tr. 520-24). These instructions included the following:

> [E]vidence of prior difficulties between the Defendant and the alleged victim has been admitted for the sole purpose of illustrating, if it does so illustrate, the state of feeling between the defendant and the alleged victim and the bent of mind and course of conduct on the part of the defendant. Whether this evidence illustrates such is a matter solely for you, the jury, to determine. But you are not to consider such evidence for other purposes.
>
> * * *
>
> [A] person is justified in threatening or using force against another person when and to the extent that she reasonably believes that such threat or force is

---

[1]Appellant's Brief on Certiorari, pp. 4-9, already contains a complete statement of facts with transcript references. Only where additional facts are recited in this brief do *Amici* include further transcript references.

necessary to defend herself or a third person against the other's imminent use of unlawful force.

A person is justified in using force . . . likely to cause death or great bodily harm only if that person reasonably believes that such force is necessary to prevent death or great bodily harm . . . or to prevent the commission of a forcible felony.

* * *

The standard is whether the circumstances were such that they would excite not merely the fears of the [Tr. 522] defendant, but the fears of a reasonable person. For the killing to be justified under the law, the accused must have acted . . . under the influence of these fears and not in a spirit of revenge.

* * *

[I]t is not essential to justify a homicide that there should be an actual assault . . . upon the defendant. Threats accompanied by menaces, though the menaces do not amount to an actual assault, may . . . be sufficient to arouse a reasonable belief that one's life is in imminent danger . . . Provocation by threats or words alone will, in no case, justify the homicide . . . [Tr. 523].

* * *

[T]he use of excessive . . . or unlawful force while acting in self-defense would not be justified if you find that the force used exceeded that which the Defendant reasonably believed was necessary . . . .

[A] person is not justified in deliberately assaulting another person . . . solely in revenge for past or previous wrong regardless how serious [it] might have been when the episode involving [Tr. 524] the previous wrong has ended. . . .

If you find from the evidence in this case that the Defendant used force against the alleged victim . . . in order to prevent an impending wrong which the Defendant reasonably believed was about to be committed . . . and that the Defendant reasonably believed that such force was necessary in order to prevent the impending wrong, . . . then that use of force would be justified and it would be your duty to acquit . . . .

On the other hand, if you believe beyond a reasonable doubt . . . that the Defendant used force . . . for the sole purpose of avenging a past or previous wrong, regardless of how serious such . . . wrong may have been, and not for the purpose of preventing an impending wrong, . . . you would be authorized to convict . . . .

The trial court rejected Appellant's proffered instructions which directed the jury to consider the testimony regarding battering in assessing self-defense. *See* Appellant's Brief on Certiorari, pp. 1-3.

The jury, evidently finding that the Appellant acted solely as the result of "passion resulting from serious provocation sufficient to excite such passion in a reasonable person," *Smith v. State*, 222 Ga. App. 412, 474 S.E.2d 291 (1996), acquitted her of murder but convicted her of voluntary manslaughter.

The Court of Appeals sustained the trial court's refusal to give the jury Appellant's requested instructions concerning the evidence of abuse. It reasoned that "battered woman syndrome" is not a separate defense. Since the trial court gave the pattern justification charge, binding authority required affirmance. *Id.* at 413.

III. CERTIFIED QUESTION

On December 6, 1996 this Court granted certiorari on the question "Under what circumstances is a defendant entitled to a charge, separate and apart from the general charge on justification, on the battered person syndrome?"

IV. ISSUES ADDRESSED BY *AMICI*

For purposes of this brief, *Amici* treat the issues within the certified question as follows:

When lay and expert testimony on domestic violence and its effects has been admitted under applicable case law and OCGA §16-3-21(d) in support of a claim of self-defense:

a) The trial court should instruct the jury concerning the purposes for which such evidence is relevant under the applicable case law and the statute, and

b) The pattern justification instructions such as those given in this case were insufficient and misleading.

V. ARGUMENTS AND CITATIONS OF AUTHORITY

A. The trial court deprived the Appellant of proper consideration of her defense by failing to instruct the jury clearly, pursuant to established case law and OCGA §16-3-21(d), that in assessing self-defense it should consider her circumstances, including her abuse at the hands of the decedent and its effects, as presented through lay and expert witnesses.

1. Under established Georgia law, the jury must consider the defendant's circumstances in assessing self-defense, including the history of abuse by the decedent and its effects, as explained through lay and expert testimony.[2]

While Georgia subscribes to an objective, hypothetical "reasonable person" standard to assay reactions under provocation in cases involving homicide and reactions under fear or threat in cases

---

[2]At the outset, it is important to explain the terminology used in this brief. *Amici* use the term "battering and its effects" to describe the substance of lay and expert testimony regarding abuse. *Amici* note that many experts, including Dr. Loring here, describe such testimony as "battered woman syndrome," a term coined in the late 1970s (*see* Lenore E. Walker, *The Battered Woman* [1979]). During the last 25 years, extensive research has been done focusing on battering and its effects upon women, men, and children. As the professional literature has grown, the original term has become less and less adequate to describe accurately and fully the current body of knowledge about battering and its effects. Many more experts and social scientists have replaced "battered woman syndrome" with the term "battering and its effects" to describe the experiences, beliefs, perceptions and realities of battered women's lives. *See, e.g.*, NATIONAL INSTITUTE OF JUSTICE, DEPARTMENT OF JUSTICE, THE VALIDITY AND USE OF EVIDENCE CONCERNING BATTERING AND ITS EFFECTS IN CRIMINAL TRIALS: REPORT RESPONDING TO SECTION 40507 OF THE VIOLENCE AGAINST WOMEN ACT, NCJ 160972 (May 1996); Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191 (1993); and Evan Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973, 975-76 (1995). Many domestic violence experts now agree that "battered woman syndrome" is too limiting and incorrectly implies that all women who experience abuse react in the exact same way and suffer from a common "syndromic" malady. *See* Dutton at 1196, and *People v. Humphrey*, 921 P.2d 1, 7 n.3 (Cal. 1996). Far from being "abnormal," the variety of responses displayed by battered women are generally normal and reasonable responses to a highly *unreasonable* situation. Finally, the preoccupation with the question of whether or not the defendant "has" the "syndrome" obscures the most critical purpose of the expert's testimony: to explain to the jury the relevance of the abuse to the elements of the crime and defense at issue. For these reasons, *Amici* use the more accurate and inclusive term "battering and its effects." Similar language is increasingly being used in legal and scholarly treatises (*see, e.g.*, NATIONAL INSTITUTE OF JUSTICE, Dutton, and Stark), as well as in statutes (*see, e.g.*, LA. CODE EVID. ANN. art. 404(A)(2) (West 1989) (allowing for the admissibility of "an expert's opinion as to the effects of the prior assault acts"), MASS. GEN. LAWS ANN. ch. 233, §23E (West 1994) (allowing for expert testimony regarding "the nature and effects of physical, sexual or psychological relationships"), NEV. REV. STAT. §48.061 (1993) (provides that the "[e]vidence of domestic violence . . . and expert testimony concerning the effect of domestic violence is admissible"), and OKLA. STAT. ANN. tit. 22, 40.7 (West 1992) (allowing for expert testimony "concerning the effects of . . . domestic abuse on beliefs, behavior, and perception" of the person being abused).

involving justification,[3] this state's justification defense has historically also accommodated the defendant's particular perspective. Case law reflects that the self-defense standard has evolved to include consideration of circumstances which contribute to *the defendant's* "reasonable beliefs." *See, e.g., Alexander v. State*, 8 Ga. App. 531, 69 S.E. 917 (1911); and *Truitt v. State*, 90 Ga. App. 181, 82 S.E.2d 166 (1954).

This principle is the basis for the holdings of this Court that prior acts of violence by the decedent are admissible and relevant to a justification defense. *See Daniels v. State*, 248 Ga. 591, 285 S.E.2d 516 (1981); *Clenney v. State*, 256 Ga. 116, 344 S.E.2d 216 (1986); and *Chandler v. State*, 261 Ga. 402, 407, 405 S.E.2d 669 (1991). Such prior acts are admissible because *"what the defendant 'knew as to the decedent's character for violence' had a probative bearing on what he 'reasonably believe[d]' was necessary under his circumstances,"* *Lolley v. State*, 259 Ga. 605, 607 at 608-09, 385 S.E.2d 285 (1989) (Weltner, J., concurring) (emphasis added).

A strict "objective reasonable person" standard would have no room for a defendant's specialized knowledge of her experiences of abuse with the decedent or the decedent's propensity for violence, yet there is no question that this sort of evidence has been admissible for many years on any question of justification. In this regard, *Daniels*, *Clenney*, and *Chandler* were variations on an old, familiar theme. *See Alexander v. State*, *supra*; *Truitt v. State*, *supra*; *Milton v. State*, 245 Ga. 20, 262 S.E.2d 789 (1980); *Henderson v. State*, 234 Ga. 827, 218 S.E.2d 612 (1975);

---

[3]*See, e.g., Bivins v. State, 200 Ga. 729, 38 S.E.2d 273 (1946); Brown v. State, 223 Ga. 76, 153 S.E.2d 709 (1967); Moore v. State, 228 Ga. 662, 187 S.E.2d 277 (1972); Jackson v. State, 239 Ga. 40, 235 S.E.2d 477 (1977); Johnson v. State, 266 Ga. 624, 469 S.E.2d 152 (1996); Weldon v. State, 84 Ga. App. 634, 66 S.E.2d 920 (1951); Lynn v. State, 162 Ga. App. 437, 291 S.E.2d 572 (1982); and Moore v. State, 176 Ga. App. 490, 336 S.E.2d 365 (1985).*

McDonald v. State, 182 Ga. App. 509, 356 S.E.2d 264 (1987); and *Sawyer v. State*, 161 Ga. App. 479, 288 S.E.2d 108 (1982).

The cases involving battered women defendants and expert testimony on battering and its effects, sometimes called the "battered woman syndrome," are an outgrowth of these general principles permitting consideration of the defendant's circumstances on a claim of self-defense. It was from this familiar direction that in *Smith v. State*, 247 Ga. 612, 277 S.E.2d 678 (1981), this Court specifically upheld the right to present evidence of battering, including expert testimony, to assist the jury in assessing self-defense. After surveying decisional law nationally, this Court perceived a particular need for such testimony in light of the myths that prevail about battered women and their capacity to safely leave their abusers. *Smith v. State*, *supra* at 618.[4]

---

[4]State and federal decisional law has followed Georgia's lead in holding that expert testimony on battering and its effects is admissible to support a claim of self-defense, and to rebut myths and misperceptions about battered women. *Ex parte Haney*, 603 So. 2d 412 (Ala. 1992); *State v. Borrelli*, 227 Conn. 153, 629 A.2d 1105 (1993); *Ibn-Tamas v. United States*, 407 A.2d 626 (D.C. App. 1979); *Terry v. State*, 467 So. 2d 761 (Fla. App. 4 Dist. 1985); *State v. Cababag*, 9 Haw. App. 496, 850 P.2d 716 (1993); *People v. Minnis*, 118 Ill. App. 3d 345, 455 N.E.2d 209 (1983); *People v. Fleming*, 155 Ill. App. 3d 29, 507 N.E.2d 954 (1987), *leave to appeal denied*, 116 Ill. 2d 566, 515 N.E.2d 116 (1987), *rev'd on other grounds, sub nom. U.S. ex rel. Fleming v. Huch*, 924 F.2d 679 (7th Cir. 1991); *State v. Crawford*, 253 Kan. 629, 861 P.2d 791 (1993); *State v. Clements*, 244 Kan. 411, 770 P.2d 447 (1989); *State v. Stewart*, 243 Kan. 639, 763 P.2d 572 (1988); *State v. Anaya*, 438 A.2d 892 (Me. 1981); *Commonwealth v. Rodriguez*, 633 N.E.2d 1039 (Mass. 1994); *State v. Hennum*, 441 N.W.2d 793 (Minn. 1989) (*en banc*); *State v. Hess*, 252 Mont. 205, 828 P.2d 382 (1992), *reh'g. den.* 3/31/92; *State v. Baker*, 120 N.H. 773, 424 A.2d 171 (1980); *State v. Kelly*, 97 N.J. 178, 478 A.2d 364 (1984); *State v. Gallegos*, 104 N.M. 247, 719 P.2d 1268 (1986); *In the Matter of Nicole V.*, 71 N.Y.2d 112, 518 N.E.2d 914 (1987); *State v. Koss*, 49 Ohio St. 3d 213, 551 N.E.2d 970 (1990); *Bechtel v. State*, 840 P.2d 1 (Okla. Cr. App. 1992); *State v. Moore*, 72 Ore. App. 454, 695 P.2d 985 (1985); *State v. Hill*, 287 S.C. 398, 339 S.E.2d 121 (1986); *Fielder v. State*, 756 S.W.2d 309 (Tex. Cr. App. 1988); *State v. Allery*, 101 Wash. 2d 591, 682 P.2d 312 (1984); *State v. Bednarz*, 179 Wis. 2d 460, 507 N.W.2d 168 (Wis. App. 1993); see also *Dunn v. Roberts*, 963 F.2d 308 (10th Cir. 1992) (conviction reversed because trial court denied funds for battered woman defendant to obtain expert witness); *United States v. Winters*, 729 F.2d 602 (9th Cir. 1984); *Fennell v. Goolsby*, 630 F. Supp. 451 (E.D. Pa. 1985).

The most recent appellate decisions continue to recognize the legitimacy and need for evidence of battering and its effects on the accused, *e.g.*, *State v. Borrelli*, 629 A.2d 1105; *Commonwealth v. Rodriguez*, 633 N.E.2d 1039; *State v. Hess*, 828 P.2d 382; *State v. Koss*, 551 N.E.2d 970; *Bechtel v. State*, 840 P.2d 1; *Fielder v. State*, 756 S.W.2d 309. For a detailed analysis of national trends on the

Since the *Smith* decision, this Court has reaffirmed its position on the admissibility of expert testimony on battering and its effects. *Chapman v. State*, 258 Ga. 214, 367 S.E.2d at 543; and *Allison v. State*, 256 Ga. 851, 353 S.E.2d 805 (1987). *See also Pugh v. State*, 260 Ga. 874; and *Motes v. State*, 192 Ga. App. 302, 384 S.E.2d at 466.

That Georgia considers the defendant's particular circumstances in assessing self-defense is evident not only from judicial precedent but from the language of the justification statute itself since at least the 1968 code revision. While terms such as "the fears of a reasonable person" or "a reasonable belief" (Tr. 522), semantically express a detached, objective standard, the words "reasonably believes" (OCGA §16-3-21[a]; Tr. 521, 523, 524) plainly focus more on *how* a person believes something rather than substantively upon *what* he believes.

More recently, in 1993, the Legislature codified this right in OCGA §16-3-21(d).[5] That paragraph states:

> (d) In a prosecution for murder or manslaughter, if a defendant raises as a defense a justification provided by subsection (a) of this Code section, the defendant, in order to establish the defendant's reasonable belief that the use of force or deadly force was immediately necessary, may be permitted to offer:

---

admissibility of expert testimony, *see* Janet Parrish, *Trend Analysis: Expert Testimony on Battering and Its Effects in Criminal Cases* 36-37 (November 1994) (report prepared by the National Clearinghouse for the Defense of Battered Women for The Women Judges' Fund for Justice for a State Justice Institute-funded project, also appears in NATIONAL INSTITUTE OF JUSTICE).

[5]Georgia is joined by eleven other states which have enacted statutes which provide for the admissibility of such testimony. See CAL. EVID. CODE §1107 (West 1993), LA. CODE EVID. ANN. art. 404(A)(2) (West 1989), MD. CTS. & JUD. PROC. CODE ANN. §10-916 (1991), MASS. GEN. LAWS ANN. ch. 233, §23E (West 1994), MO. ANN. STAT. (Crimes & Punishment) §563.033 (Vernon 1991), NEV. REV. STAT. §48.061 (1993), OHIO REV. CODE ANN. §§2901.06, 2945.392 (Anderson 1990), OKLA. STAT. ANN. tit. 22, §40.7 (West 1992), S.C. CODE ANN. §17-23-170 (Law. Co-op. 1995), TEX. PENAL CODE ANN. §19.06 (West 1992), WYO. STAT. (Crimes & Offenses) §6-1-203 (1993). In addition, Virginia has passed a statute that mandates the admission of relevant evidence of battering and its effects in certain criminal actions, which foreseeably includes expert testimony on the effects of intimate violence. VA. CODE §19.2-270.6 (1993).

> (1) Relevant evidence that the defendant had been the victim of acts of family violence or child abuse committed by the deceased, as such acts are described in Code §19-13-1 and §19-15-1, respectively; and
>
> (2) Relevant expert testimony regarding the condition of the mind of the defendant at the time of the offense, including those relevant facts and circumstances relating to the family violence or child abuse that are the bases of the expert's opinion.

The General Assembly thus confirmed that both lay evidence ("relevant evidence that defendant had been the victim of acts of family violence") and expert testimony ("regarding the condition of the mind of the defendant at the time of the offense, including those relevant facts and circumstances concerning the effects of family violence") are relevant and admissible "*in order to establish the defendant's reasonable belief that the use of force or deadly force was immediately necessary.*" OCGA §16-3-21(d).[6]

The Legislature was surely persuaded by the same considerations which had persuaded this Court, the recognition that expert testimony is often needed to enable the jury to understand the realities of battered women's' lives (e.g., why she would not leave her mate, would not inform police or friends, and would fear increased aggression against herself), and to understand the circumstances surrounding the reasonableness of her actions at the time of the defensive act, e.g.,

---

[6]OCGA §16-3-21(d) defines the key issue as "the *defendant's* reasonable belief that . . . deadly force was immediately necessary" (emphasis added). This Court was quite correct when it observed (in *dictum*) in *Selman v. State*, 267 Ga. 198, at ___, 475 S.E.2d 892 (1996), that OCGA §16-3-21(d) did not alter the elements of justification, but this is because the courts of this state had already evolved essentially the standard which the language of 21(d) codified. The courts have just been less willing to recognize explicitly that the standard long ago ceased to be *purely* the "fears of a reasonable person" but has become one which, under some circumstances, looks to "the fears of a reasonable person *standing in the defendant's shoes.*"

why she believed that she had to act to defend herself from imminent danger at the time, and why under the circumstances that belief was reasonable.[7]

Thus, Georgia is among the majority of jurisdictions which subscribe to an "objective" standard of reasonableness, but which in fact allow for consideration of the defendant's particular circumstances.[8] This standard requires the jury to assess whether a reasonable person in the defendant's circumstances would believe that there was a need for using defensive force, considering his or her personal experiences with the decedent.

2. This Court, particularly in view of the enactment of OCGA §16-3-21(d), should reconsider its reasons for discouraging specific instructions which would materially aid the jury in properly assessing a claim of self-defense in light of evidence of battering and its effects.

Although this Court has been a leader assuring the admissibility of evidence of battering and its effects on issues of justification, it has not required that this evidence go to the jury accompanied by any specific guidance on its relationship to the legal elements of a justification defense. In light of established case law on self-defense and jury instructions, this Court ought

---

[7]Justice Sears, concurring in *Chester v. State*, 267 Ga. 9, at __, 471 S.E.2d 836 (1996), suggested that, in the case of battered women defendants, the "reasonable person standard should be slightly modified in order to permit juries to consider the reasonableness of the defendant's belief that the use of force was necessary in light of both his circumstances at the time he used force, and any psychological condition resulting from such circumstances."

Amici agree that reasonableness must be assessed in light of all circumstances and, as outlined in the previous section, believe that existing Georgia law requires consideration of those circumstances, including the effects of abuse. If the jury is given the instructions enabling it to *understand* how the defendant's experiences of abuse at the hands of the decedent relate to her self-defense claim under the law, the existing reasonableness standard should not need to be altered for cases involving battered women defendants.

[8]*See* Maguigan, Holly, *Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals,* 140 U.PA.L.REV. 379 at 409-10.

to reconsider its holdings discouraging trial courts from giving juries appropriate instructions.

In addition, the enactment of OCGA §16-3-21(d) further suggests that this Court should reconsider its discouragement of specific instructions in cases of battered defendants. As Justice Frankfurter wrote for a unanimous Supreme Court in an analogous context, the adoption of a statute making evidence admissible or inadmissible for a stated purpose is "an implied direction to judges to exercise their traditional duty in guiding the jury by indicating the considerations relevant to the latter's verdict on the facts." *Bruno v. United States*, 308 U.S. 287, 293 (1939).

The Court has previously reasoned (a) that because "battered woman syndrome" is not a separate defense, no charge apart from the justification charge need be given; (b) that the pattern justification charges are adequate to explain the law; and (c) that such instructions would amount to an improper judicial comment on the evidence. *Pugh v. State*, 260 Ga. at 876-77; *Chapman v. State*, 258 Ga. at 216. *Amici* address each of these rationales *seriatim*.

As to (a), whether a battered person raises a defense distinct from the general justification defense, *Amici* fundamentally agree that there is no *separate* "battered women's defense" or "battered woman syndrome defense," and that evidence of domestic abuse is not offered as a separate defense but rather to support a general defense of justification. *Pugh v. State*, *supra*. Lay and expert testimony regarding the history, dynamics, and effects of abuse is admissible and relevant to provide the jury with a proper understanding of the circumstances surrounding the reasonableness of a defendant's reactions, an understanding unencumbered by prevailing myths concerning battered women. But it simply does not follow that, because there is no separate defense, additional instructions--still a part of the basic justification charge-- should not be given

when they would be helpful to explain how the evidence of battering and its effects relates to the elements of a justification defense. See pp. 20-25, *infra*.

As to (b), the adequacy of the pattern instructions, the pattern justification instructions raise certain problems this Court may not have considered; they are not only passively inadequate but affirmatively misleading, if not independently erroneous. See pp. 25-28, *infra*.

Finally, as to (c), whether an instruction would improperly comment on the evidence, it is hard to understand how specific instructions would amount to a harmful judicial comment upon the evidence any more than, for instance, a common instruction directing the jury's attention to an inference permitted by the evidence or an instruction explaining a defendant's "good character." The absence of a specific instruction though, leaving the jury with no guidance, presents serious risks to a fair trial. It is the Appellee's brief, undercutting its own argument, which best illustrates the great risks of giving the jury no guidance.

The Appellee's brief contends that specific instructions would focus the jury on a "character assassination" of the decedent, "intimat[ing] that the defendant should be acquitted because she had been abused and had killed her abuser" (State's Brief, pp. 4, 14-15). Although this risk of verdict corrupted by "character assassination" is certainly real, it is not an *instruction* which raises it. Rather, what raises it is the *evidence of abuse*, the admissibility of which is now a firmly settled question.

An instruction which clearly *explains* to the jury how to use properly evidence concerning abuse inflicted by the decedent would *redress*, not create, the problem of using the evidence for the *wrong* purpose. It would *prevent* jurors from considering the evidence for an incorrect reason.

3. **The trial court's failure to instruct the jury clearly that--in assessing self-defense--it should consider the Appellant's circumstances, including her abuse at the hands of the decedent and its effects, as presented through lay and expert witnesses, deprived her of proper consideration of her defense.**

Appellant presented abundant evidence of the horrific abuse inflicted by decedent, including choking her until she lost consciousness (Tr. 421), putting a gun to her head (Tr. 423-24), threatening to kill her and take away her severely handicapped son (Tr. 423-25), and wrapping a cord around her neck (Tr. 426, 296). Moreover, she presented expert testimony on the effects of that abuse over time, including the constant terror, fear and shock, as well as the fact that it is not at all unusual for a battered person to remain in the relationship (Tr. 460).

The jury had to decide whether, at the moment of the shooting, the defendant reasonably believed that she was in *imminent* danger. This Court has repeatedly recognized that consideration of evidence about abuse is critical to a fair resolution of the issue. For example, in *Chapman*, this Court noted that a key purpose of expert testimony is to convey to the jury that:

> [N]otwithstanding any lapse in time since the husband's last assault, the defendant honestly was trying to defend herself although her husband was not at the moment physically attacking her, for example when she shot her husband while he was sleeping. *Chapman, supra* at 216.

The concept of imminence is one that can only be answered with reference to the circumstances of the defendant, including the lay and expert evidence that was presented. [9]

---

[9] Concurring in *Chester*, Justice Sears suggested that *Chapman* established a special element in "battered person's syndrome" cases which is not present in regular self-defense cases: in "battered person's" cases, the actual threat of harm need not immediately precede the homicide, while in standard self-defense cases, the threat of harm must be imminent.

Amici agree that imminence is a particularly complex issue in self-defense cases in which there is a history of abuse. These range from the so-called "traditional" self-defense situations, where the woman defends herself against an ongoing attack or confrontation by her abuser, to less common circumstances where the defensive act occurs when the abuser is asleep or at rest or during a lull in the violence.

Even where the act occurs during an ongoing confrontation, it is often difficult for many jurors to

Moreover, the jury's lack of information as to how it could evaluate the expert testimony in assessing self-defense created a serious risk that jurors' own incorrect ideas and misconceptions about domestic violence got in the way of a proper assessment of the evidence. Jurors commonly misunderstand the dynamics of domestic violence and its effects on battered women.[10] Jurors often share a number of misconceptions about battered women , misconceptions which generally center around a lack of appreciation for what are normal, reasonable reactions to being battered.[11] Such misconceptions are likely to interfere with a juror's ability to evaluate self-defense claims properly, absent jury instructions which offer appropriate guidance.

For example, one of the crucial areas of misunderstanding that expert testimony can address is the relationship between prior acts of violence by the decedent and the incident for which a defendant is on trial. While the jury in this case heard testimony to help it understand this connection, it was prevented from using that testimony in assessing self-defense.

---

understand how the danger could have been imminent if the woman could have previously left. Many jurors fail to see how *any* woman who "maintains" a relationship with her assailant can ever be in imminent danger. Such misconceptions thus interfere with a proper assessment of imminence and the difficulties are confounded in the less "traditional" situations. Battered women can be--and often are--in imminent danger even when there is a lull in the violence or when the batterer appears to be no present threat or even to be retreating from a confrontation.

Only by understanding the effects and realities of domestic violence as presented through lay and expert witnesses, might jurors be able to evaluate properly the imminence question, unencumbered by misconceptions. As recognized in *Chapman*, this is a key purpose of such evidence.

Accordingly, if the jury is clearly instructed to evaluate imminence not only in the context of the events immediately preceding the act, but also in light of all of the defendant's past experiences of abuse, as explained through lay and expert testimony, then the current definition of "imminence"should not need be changed in cases involving battered women.

[10]Regina A. Schuller, Vicki L. Smith & James M. Olson, *Jurors' Decisions in Trials of Battered Women Who Kill: The Role of Prior Beliefs and Expert Testimony*, 24 J. APP. SOC. PSYCH. 316, 317 (1994).

[11]Elizabeth M. Schneider, *Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense*, 15 HARV. C.R.-C.L. L. REV. 623, 629 (1980).

Common misconceptions include that battered women can just leave at any time; that if they only left, they would be safe; and that women are responsible for their "failure" to leave the relationship.[12] Jurors who subscribe to this belief are willing to believe that self-defensive force was not necessary for a battered defendant if she had an opportunity to leave earlier in the relationship. Jurors may also rely on the belief that leaving is a viable option to infer that if the violence was as bad as the defendant describes, she would have left, so therefore she can't be telling the truth about the level of prior violence.[13]

Such misconceptions can result in an erroneous assessment that the defendant is not credible in her description of the abuse, and hence, not credible in her explanation of the incident. The idea that "she could have left" further interferes with the basic self-defense questions. How could she have been reasonable if she could have just left? How could she reasonably have believed that the danger was "imminent" if she could have escaped and avoided it altogether? That these misconceptions interfere with a jury's ability to assess self-defense has already been explicitly recognized by this Court. *Smith v. State*, 247 Ga. 612, *supra*. Appellant properly presented testimony that would have dispelled these dangerous misconceptions (Tr. 450-51, 460); yet, with no guidance by the court, the jury was prevented from using that information in deciding whether Appellant credibly believed and reasonably feared imminent danger.

---

[12]Martha Mahoney, *Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1 (1991); *See also* Schuller, Smith, & Olson.

[13]Martha Mahoney, *Victimization or Oppression? Women's Lives, Violence, and Agency, The Public Nature of Private Violence* 59, 78 (Fineman and Mykitiuk, eds., 1994). *See also State v. Kelly*, 478 A.2d at 377; Martha Mahoney, *Exit: Power and the Idea of Leaving in Love, Work, and the Confirmation Hearings*, 65 S. CAL. L. REV. 1283, 1285 (1992).

The state's argument about "alternatives to violence" exemplifies the kind of misconceptions that continue to interfere with the ability of battered women to receive fair trials.[14] In 1981, this Court recognized that juries must understand the realities of battered women's lives; that expert testimony must help to dispel misconceptions about battered women and explain such seemingly curious matters as "why she would not leave her mate, would not inform police or friends, and would fear increased aggression against herself." *Smith v. State*, 247 Ga. at 619-20. Yet, still, over fifteen years later, Appellee argues that precisely because a battered woman has not "availed herself of some alternatives to violence," she does not "deserve" the right to self-defense. This argument defies 25 years of social science research about domestic violence as well as the dictates of this Court and the Legislature as to the need for expert testimony on battering and its effects to dispel precisely these kinds of myths.[15]

---

[14]Appellee notes that Appellant "never sought mental health assistance;" did not call either the police department or sheriff's office to "quell domestic disputes;" and did not "flee to local shelters or safehouses for refuge" even though these "options were available free of charge." State's Brief, p. 20. Appellee concludes that "[r]epeatedly Appellant had chances to correct the problems in her home without violence. She opted to kill her husband instead. No defendant deserves the protection and support of the courts through a special jury instruction if that Defendant fails to use the alternatives available to her." *Id.* at 21.

[15]Appellee further argues that defendants should have to make a threshold showing that they have "learned helplessness" before receiving any jury instructions regarding the evidence of abuse because early in the relationship, before the defendant "learns" to be "helpless," she could have, and should have, availed herself of alternatives. This again reflects a misunderstanding of the realities of domestic violence and battered women's' lives and the potential negative consequences of help-seeking behavior on battered women.

"Learned helplessness" is a theoretical concept that was developed to explain why battered women find it difficult to escape a battering relationship and come to believe and/or understand that their actions will have not have any effect on the abuser's behaviors. *See, e.g.*, Lenore E. Walker, *The Battered Woman Syndrome* (1984) at 86. Sometimes battered women do not call the police (or stop calling the police because the abuse escalated after past police intervention), do not tell anyone about or report the abuse, or fail to engage in what looks to outsiders as other "help-seeking" behavior. However, current research suggests labeling these behaviors as "passive" or "helpless" is not correct. On the contrary, a battered woman's decision not to take steps that would seem to help her (e.g., calling police, going to shelters, etc.) is often an *active* survival strategy. *See* Dutton at 1227. Research shows that the most

Appellee's misunderstanding typifies that of many jurors. It underscores that, in order to assess self-defense claims fully and fairly--unencumbered by such misconceptions about battered women--jurors must *understand*, through accurate jury instructions, the defendant's experiences of abuse and how that abuse relates to the defense.

On the whole, the instructions given in this case left the jury to assess the critical question --did the Appellant reasonably fear imminent danger when she shot the decedent--in a vacuum, without assurance that it would properly consider the cumulative effects of the abuse that Appellant had suffered at his hands, contrary to established Georgia law.

4. On timely request, Appellant was entitled to correct, specific jury instructions pertinent to her defense which would have materially aided the jury.

A specific instruction relating the evidence of abuse to the self-defense claim would not represent any departure from established Georgia law on jury instructions. On the contrary, such an instruction is fully authorized by longstanding precedent that has permitted specific instructions

---

dangerous time for many women is when they try to leave or seek help. *See* Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 Mich L. Rev. 1, 5-6. Based on her experiences with the batterer, and, in some cases, her previous attempts to seek help, a woman may very reasonably conclude that not seeking outside intervention is the best -- or only -- way for both her and her children to survive and/or for her to reduce or contain the violence. Indeed, in this case, Appellant called the police ten to twelve times, all to no avail, and was warned that if she took out a warrant on the decedent "he would beat my butt for taking out a warrant on him" (Tr. 427-28).

Moreover, regardless of the particular theory to which one subscribes, it is not the business of courts to endorse a particular social research theory, or to condition rights upon acceptance of one theory over another. Rather, the details of a particular field of expertise should be left to the researchers and experts to explain, and to the jury to weigh and consider. In codifying the right to present expert testimony on battering and its effects, the Legislature wisely refrained from dictating the content of expert testimony and endorsing any one theory.

when needed to guide the jury on distinct issues of law, and specifically, on the issue of the reasonable fears of a defendant in a self-defense case.

Georgia has long held that it is reversible error for a court to refuse a proper request for a jury instruction "that applies [an abstract] principle [of law] to the facts of the case, if the proof justifies its application,"[16] at least so long as the point of law was not "sufficiently covered in the general charge." *See, e.g., Rembert v. State*, 76 Ga. App. 254, 256, 45 S.E.2d 798 (1947) ("It is not error to refuse special written requests to charge when the matter referred to therein is sufficiently covered in the general charge"). The case law requiring that appropriate, specific instructions be given is firmly rooted in reason. In 1854, Justice Lumpkin wrote:

> I give [this suggestion] as the result of thirty-four years' experience, that ordinarily, *general charges*, however abstractly true, are worse than useless--their effect being to misguide, instead of directing the Jury to a right finding; and the only instructions which are worth anything, are such as to enable the Jury to the *precise case* made by the proof. If the case comes within an exception or limitation of a general rule, restrict the investigation until the exact point on which it turns stands out prominently before the eye of the Jury, stripped of all generalities. Their task then is comparatively easy and safe. *Haynes v. State*, 17 Ga. 465 at 483.

Chief Justice Bleckley reminded the bench and bar in 1886 that:

> [L]aw is not only to be submitted to the jury, but it is to be applied by them; and where its application is materially aided by a specific request, there seems as much reason to give that request as to give the principle; and looking to the evidence in this case, we have no doubt that the request was a proper one. It was bringing the

---

[16] *Slade & Etheridge v. Pascal*, 67 Ga. 541, 545 (1881); *Thompson v. Thompson*, 77 Ga. 692, 3 S.E. 261; *Metropolitan S. R. Co. v. Johnson*, 90 Ga. 500, 16 S.E. 49 (1892); *Roberts v. State*, 114 Ga. 450, 40 S.E. 297 (1901); *Central of Ga. R. Co. v. Goodman*, 119 Ga. 234, 45 S.E. 969 (1903); *Brooks v. State*, 128 Ga. 261, 57 S.E. 483 (1907); *Alexander v. State*, *supra*; *Ham v. Preston*, 164 Ga. 682, 139 S.E. 421 (1927); *Rowe v. Cole*, 176 Ga. 592, 168 S.E. 882 (1933); *Atlantic C. L. R. Co. v. Anderson*, 75 Ga.App. 829, 44 S.E.2d 576 (1947); *Jones v. Lowman*, 85 Ga. App. 743, 70 S.E.2d 122 (1952); *Thomas v. State*, 95 Ga. App. 699, 99 S.E.2d 242 (1957); *Blankenship v. West Ga. Plumbing Supply*, 213 Ga. App. 275, 444 S.E.2d 596 (1994).

> general principle down to this specific instance; and the jury would have been helped materially by having . . . this request delivered to them as part of the charge of the court. *Thompson v. Thompson*, *supra* at 698.

See also *Rowe v. Cole*, 176 Ga. at 599 (Russell, C.J.).

The two lines of principle--that, if requested, an appropriate instruction must be given, and that such an instruction need not be given "if sufficiently included in the general charge"--collided head on in several cases, but the former prevailed. *Werk v. Big Bunker Hill Mining Corp.*, 193 Ga. 217, 17 S.E.2d 825 (1941). As the law developed, it became clear that, even where the point of the proposed instruction was "sufficiently covered" elsewhere in the charge, that fact did not justify rejecting appropriate and properly requested instructions which illuminated specific points of law:

> [The requirement to give appropriate, specific, requested instructions] should not be replaced, in true "backlash' fashion, by . . . the "sufficiently covered elsewhere" axiom . . . , whereby trial judges are encouraged to refuse appropriate clarifying charges researched by the parties most familiar with the unique aspects of a particular case and individualized to address those aspects, and instead to prefer standardized charges, promulgated as general reference materials, which are incapable of reflecting the unique characteristics each law suit presents. . . . [To do so would] encourage trial courts to continue a practice which perverts instructions from their true purpose . . . into abstruse summaries of "general principles" presented in their most encapsulated, reversal-proof form. . . *Smoky v. McCray*, 196 Ga. App. 650, 654-56, 396 S.E.2d 794 (1990) (*en banc*).

Most importantly, these cases make clear that the fundamental inquiry is not whether the points are covered in an abstract way by other parts of the charge but, rather, when viewed *from the perspective of the average juror*, the charge would *materially aid* the jury in applying the law:

> [T]he learned jurists who comprise the bench in this state must remember that charges are submitted to the jury so that *the jury* can apply the law, and accordingly the proper charges to give are those that materially aid the jury in accomplishing that goal. . . . Thus, in determining whether a requested charge is "substantially covered" by a standardized "general principles" charge, the charge

> must be reviewed from the perspective of the average juror, unschooled in law and hence unable to grasp all the shades and nuances which the law may present in an individual case solely from an abbreviated discussion of the "general principles" involved. Since it is the jury, not the trial court or the appellate courts, that applies the law, the better policy is to tailor charges to it, not to the reviewing courts. *Id.* at 654-56.

Applying these longstanding principles to the instant case, it is clear that a specific instruction on the relevance of the lay and expert evidence to the self-defense claim was required. In this case, the principles were not "sufficiently covered" in the general charge, since, as discussed below, the reasonableness and "prior difficulties" instructions did not adequately convey that the jury was to consider the history of abuse evidence in assessing self-defense. To the contrary, viewed from the perspective of the "average juror," the charge as a whole, prohibited the jury from considering that evidence for the purpose of evaluating the defense of self-defense. Moreover, even if the point had been "sufficiently covered" by the boilerplate instructions, there is no doubt that a specific instruction explaining the relevance of the abuse evidence, including the expert testimony, would have "materially aided" the jury in applying the law.

Indeed, in the particular context of self-defense, this Court has previously recognized the need for appropriate, specific instructions explaining how to apply the self-defense standard. In *Roberts v. State*, *supra*, the defense proffered an instruction to clarify that the defendant need not be actually assaulted to be justified in the killing, so long as the attack was apparently imminent. This Court found the failure to give such an instruction reversible error, reasoning:

> the charge [the Appellant] requested was peculiarly appropriate to the defense set up and the evidence adduced on behalf of the accused. The charge of the judge contains the substance . . . of the code relating to justifiable homicide, and refers in a general way to the rule [contained in the request]; but nowhere in the charge is there any reference to the application of this general principle to the particular facts of the case.

* * *

> [T]he accused was entitled to have the law applicable to his defense fully stated to the jury; and . . . an appropriate written request having this effect, when properly presented . . . , should have been given . . . . While the charge as a whole contains the abstract principles of law applicable to the case, it does not in any way attempt to apply any of these principles to the particular facts of the case . . . . *Id.* at 451-52.

In *Stribling v. State*, 6 Ga. App. 864, 65 S.E. 1068 (1909), the defendant claimed self-defense, arguing that he had been previously threatened and assaulted by the decedent and his brother, and that at the time of the killing he was acting "under the fears of a reasonable man." *Id.* at 865. Stripling was refused his requested "charge which specifically applied the law relating to this defense to the particular facts of the case." There too the Court of Appeals reversed because "[w]hile the charge as a whole and as to this defense contains the abstract principles of law applicable thereto, it does not in any way attempt to apply the doctrine of reasonable fears to the particular facts of the case." *Id.* at 865.

Finally, the defense was also justification in *Alexander v. State*, *supra*, based on threats the decedent made to the defendant shortly before the homicide. The Court of Appeals held that "[t]he abstract statement of the general principle of law . . . [wa]s not sufficient to clearly instruct and guide the jury, or to insure the accused of the full benefit of his defense." It reversed the trial court for refusing to charge that:

> Although mere threats are insufficient to justify a killing in self-defense, if the jury believes that prior to the homicide deceased made threats of a violent nature against the defendant, and the evidence leaves the jury in doubt as to what the acts of the deceased were at the time of the homicide, *or as to what defendant might properly have apprehended in respect to the intentions of the deceased*, the jury are entitled to consider the threats in connection with the other evidence in determining who was probably the aggressor [and] *what apprehensions might reasonably arise in the mind of the defendant from the conduct of the deceased*. *Id.* at 531 (emphasis added).

The instruction at issue in *Alexander* essentially conveyed the same basic message which needed to be conveyed to the jurors in this case--that the prior abuse had to be considered in deciding "what the defendant" apprehended, and "what apprehensions might reasonably arise in the mind of the defendant from the conduct of the deceased." In other words, reversible error was premised on the failure of the instruction to permit the jury to consider the evidence concerning the history of abuse in assessing self-defense, precisely the error that occurred here.

5. The instructions as a whole were erroneous because they limited the jury's consideration of all the evidence relevant to the claim of self-defense.

It would have been bad enough had the general self-defense charge failed to mention the history of abuse evidence entirely, but the instructions instead mentioned the evidence of abuse only in the "prior difficulties" charge and then only to limit improperly the jury's use of this evidence (Tr. 520). According to Georgia's *Suggested Pattern Criminal Jury Instructions*, vol. II, p. 26 (2nd edition, 1991), this instruction derives from *White v. State*, 242 Ga. 21 (2), 247 S.E.2d 759 (1978), a case where evidence of prior animus between the defendant and the decedent was not introduced by the defendant in *support* of self-defense but by the State *against* him to establish his *motive* for the homicide. *See also Milton v. State*, 245 Ga. at 24. But not only was this instruction poorly designed to guide the jury through the relationship of the evidence of battering and its effects to the elements of the Appellant's justification defense, it in fact *misinformed* the jury of their proper relationship.

This instruction stated:

> [E]vidence of prior difficulties between the defendant and the alleged victim has been admitted for the *sole purpose* of illustrating, if it does so illustrate, the state of feeling

between the Defendant and the alleged victim and the bent of mind and course of conduct on the part of the defendant. Whether this evidence illustrates such is a matter solely for you, the jury, to determine. *But you are not to consider such evidence for other purposes.* (Emphasis added.)

The instruction actually *limited* the jury's consideration of the evidence in a way that severely prejudiced the Appellant. It *prohibited* the jury from using the evidence about abuse "for [any] purposes" other than to establish the Appellant's "state of feeling" and "bent of mind" and to illuminate the parties' "course of conduct." It thus directed the jury to consider "prior difficulties" in assessing whether Appellant had a *motive to kill* the decedent, but not in assessing whether she *reasonably feared* him. Effectively, it induced the jury to use the evidence about abuse--offered in her defense--*against* her and expressly prohibited it from using it directly with respect to her justification defense.

Moreover, there is no reason to believe that the jury understood this critical connection between the evidence concerning abuse and the self-defense claim. The nebulous phrases contained in the preliminary, isolated "prior difficulties" charge, not specifically connected to the self-defense instructions, did not even *suggest* that the evidence of prior difficulties should be used to assess whether the Appellant reasonably feared imminent danger at the time of her actions. See Tr. 520-524.

To the extent that the instructions directed the jury to consider the evidence about abuse only to establish the *motive* of Appellant to shoot the decedent--her "bent of mind" and the parties' "state of feeling" and "course of conduct,"--and for no other purpose (such as the reasonableness of her fear of imminent danger), they directly contravened the controlling case law and statute. See pp. 8-13, *supra*.

> between the Defendant and the alleged victim and the bent of mind and course of conduct on the part of the defendant. Whether this evidence illustrates such is a matter solely for you, the jury, to determine. *But you are not to consider such evidence for other purposes.* (Emphasis added.)

The instruction actually *limited* the jury's consideration of the evidence in a way that severely prejudiced the Appellant. It *prohibited* the jury from using the evidence about abuse "for [any] purposes" other than to establish the Appellant's "state of feeling" and "bent of mind" and to illuminate the parties' "course of conduct." It thus directed the jury to consider "prior difficulties" in assessing whether Appellant had a *motive to kill* the decedent, but not in assessing whether she *reasonably feared* him. Effectively, it induced the jury to use the evidence about abuse--offered in her defense--*against* her and expressly prohibited it from using it directly with respect to her justification defense.

Moreover, there is no reason to believe that the jury understood this critical connection between the evidence concerning abuse and the self-defense claim. The nebulous phrases contained in the preliminary, isolated "prior difficulties" charge, not specifically connected to the self-defense instructions, did not even *suggest* that the evidence of prior difficulties should be used to assess whether the Appellant reasonably feared imminent danger at the time of her actions. See Tr. 520-524.

To the extent that the instructions directed the jury to consider the evidence about abuse only to establish the *motive* of Appellant to shoot the decedent--her "bent of mind" and the parties' "state of feeling" and "course of conduct,"--and for no other purpose (such as the reasonableness of her fear of imminent danger), they directly contravened the controlling case law and statute. See pp. 8-13, *supra*.

This omission cannot have been harmless in the context of this case. Apparently, based on the "prior difficulties" instruction as to how the jury was to take and examine the evidence, it found reasonable provocation to reduce murder to manslaughter. Had the jury been permitted a proper assessment of the evidence in relation to the Appellant's reasonable fears of imminent danger, a proper instruction could easily have made the difference for Vernita Michelle Smith between a manslaughter conviction and an acquittal.

The limitations imposed by the "prior difficulties" instruction were not the only problem with the pattern instructions which were given. The trial court explained the reasonableness standard as "whether the circumstances were such that they would excite not merely the fears of the defendant, but the fears of a reasonable person" (Tr. 522). As to "threats," it told the jury that "[t]hreats accompanied by menaces . . . may be sufficient to arouse a reasonable belief that one's life is in imminent danger." *Id.*

The instructions conveyed the incorrect message that the reasonableness of the defendant's belief of imminent danger was to be measured against a mythical third person. In no way did these instructions convey that reasonableness was to be assessed as against a reasonable person *in the defendant's circumstances*, *i.e.*, in light of all the lay and expert evidence of battering and its effects. To that extent, they contradicted the statute, OCGA §16-3-21, as well as this Court's longstanding principles of self-defense. *Daniels v. State*, *supra*; *Clenney v. State*, *supra*; *Chandler v. State*, *supra*; *Alexander v. State*, *supra*; *Truitt v. State*, *supra*; *Milton v. State*, *supra*; *Henderson v. State, supra*; *McDonald v. State*, *supra*; *Sawyer v. State*, *supra*; *Smith v. State*, 247 Ga., *supra*; *Pugh v. State*, *supra*; *Chapman v. State*, *supra*; *Motes v. State*, *supra*.

The law of Georgia in self-defense cases is clear: the jury should consider the circumstances of the defendant, including the defendant's experiences of abuse at the hands of the decedent in assessing the basic question of whether she reasonably believed that the defensive force was necessary to prevent imminent harm. These circumstances encompass not only the existence of the abuse and family violence, as presented through lay witnesses, but also the dynamics and cumulative impact of the abuse, as explained by expert testimony. OCGA §16-3-21(d); *Smith v. State*, 247 Ga. 612, *supra*; *State v. Chapman*, *supra*.

The instructions effectively deprived the Appellant of the right to have the jury consider her sole defense. Viewed as a whole, they left the jury to assess the critical question -- did the Appellant reasonably fear imminent danger when she shot the decedent -- in a vacuum, without assuring that it considered the cumulative effects of the abuse that Appellant had suffered at his hands, contrary to established Georgia statutory and common law. A correct instruction on the self-defense standard, one that permitted consideration of her circumstances--including the lay and expert evidence of abuse--in assessing self-defense, would have given the jury the understanding and opportunity that it needed to assess the claim fairly, in accordance with the dictates of OCGA §16-3-21 and clear precedent of this Court.[17]

---

[17]By way of illustration, appropriate instructions on self-defense, after setting out the basic self-defense test of OCGA §16-3-21, might include one or more of the following:

"In deciding whether defendant had reasonable grounds to believe that she was in imminent danger, you must decide whether a person in the same circumstances as defendant, with her knowledge and experience, would reasonably have believed that she was in imminent danger. Among the circumstances which you may consider are the relationship and history between the parties, including the evidence about the decedent's prior words and conduct toward the defendant and others,together with the defendant's knowledge of such words and conduct.

"In this regard, you have heard the testimony of [name of expert], an expert in the field of domestic abuse. You may consider this testimony in deciding whether the defendant acted in self-defense. That is, you may consider it in deciding whether the defendant reasonably believed that she was in

6. Other jurisdictions have also recognized the need for the jury to be instructed as to the relevance of the evidence concerning abuse.

Appellee cited *Witt v. State*, 1995 Wyo. LEXIS 49, 892 P.2d 132 (1995), as support for the view that no instruction should be given explaining the evidence of abuse to the jury. State's Brief, p. 15. However, this reflects a misreading of the opinion. In *Witt*, the defendant's proffered instructions were rejected because, unlike in this case, the instructions actually given *did* inform the jury of her claim that "she acted in self-defense *after she had been subjected to mental and physical abuse over the course of her relationship with [decedent]." Id.* at 143 (emphasis added).

In describing the law of Pennsylvania, Appellee overlooked the controlling law of Pennsylvania's high court which directly addresses the precise issue here.[18] In *Commonwealth v. Stonehouse*, 521 Pa. 41, 555 A.2d 772 (1989), the Pennsylvania Supreme Court held that counsel was ineffective for failing to request specific jury instructions "to instruct the jury as to the legal relevance of the history of abuse presented at trial." *Id.* at 781. The Court reasoned:

---

imminent danger."

As an alternative example, the court might instruct the jury:

"You have heard testimony about certain words and conduct involving the decedent and the accused prior to the incident relating to these charges, including expert testimony about the effects of such words and acts upon the defendant. You may consider this testimony in determining whether or not the defendant reasonably believed that she was in imminent danger of death or serious bodily harm at the time of the conduct for which she has been charged."

[18]The only Pennsylvania case cited by Appellee is an intermediate appellate decision that dealt with an issue not relevant here, *Commonwealth v. Grove*, 363 Pa. Super. 328, 526 A.2d 369 (1987). The issue there was *whether the defendant was entitled to any self-defense instruction at all*. By contrast, in the instant case, there has been no contention that Appellant was not entitled to an instruction on self-defense. Rather, the issue in this case is the proper substance and content of the self-defense instruction.

> Thus, the jury should have been apprised of the fact that the abuse appellant suffered for three years was to be considered by the jury with respect to the reasonableness of appellant's fear of imminent danger. *Id.* at 781-82.

Because the jury should have been instructed to consider the "cumulative effects of psychological and physical abuse when assessing the reasonableness of a battered person's fear of imminent danger" and in assessing what constituted "sufficient provocation," the conviction was reversed. *See also Commonwealth v. Watson*, 494 Pa. 467, 431 A.2d 949 (1981).

Other jurisdictions have also recognized the need for the jury to be instructed as to the relevance of the evidence concerning abuse. See, e.g., *State v. Thomas*, 77 Ohio St.3d 323, 673 N.E.2d 1339 (1997), where the defendant's proposed instructions were rejected because trial court properly instructed the jury to consider the testimony regarding abuse in determining whether defendant reasonably feared imminent danger. The court charged the jury that the testimony was "offered to assist you in determining whether she acted out of an honest belief that she was in imminent danger of death or great bodily harm and that the force used by her was her only means of ending the danger. You may consider such testimony together with all the other evidence in determining whether she acted in self-defense." *Id.* at 329. *Also State v. Eng*, No. 14015, slip op. at 13-14 (Ohio App. 2d filed Sept. 30, 1994) (failure to give specific jury instruction tailored to evidence on battering and its effects was reversible error); and *People v. Humphrey*, 921 P.2d 1, 7 n.3 (Cal. 1996) (reversible error where instructions did not inform jury to consider evidence concerning abuse in assessing both the questions of defendant's honest belief in the need to defend herself, and the objective reasonableness of the belief).

VI. CONCLUSION

Since, on a claim of self-defense, Georgia law unequivocally requires that the jury be permitted to consider the defendant's circumstances, including evidence of family violence and its effects, it follows that the instructions must advise the jury of the purposes for which this evidence was admitted and its relationship to the elements of the defense. The instructions given in this case did not. On the contrary, they misstated the basic self-defense standard, failed to inform the jury of the relevance of the evidence of abuse, and actually informed the jury *not* to consider that evidence in assessing self-defense.

The inadequate, erroneous instructions in this case left the jury to assess the critical question -- whether Appellant reasonably feared imminent danger when she shot the decedent -- with no assurance that it considered the dynamics and cumulative impact of the abuse that she had suffered at decedent's hands and related expert testimony. The result was that Appellant was deprived of the right to have the jurors correctly and fairly evaluate her sole defense.

To the extent that prior opinions of this Court discourage appropriate instructions and hold that boilerplate justification instructions are sufficient, those cases should be reconsidered, overruled, or refined. This Court should assure that juries clearly understand how it may consider evidence of battering and its effects so that they may intelligently apply the law to the evidence and reach a fair verdict.

Accordingly, *Amici* respectfully urge reversal of the judgment of the Court of Appeals and a remand for the Appellant's retrial on the charge of voluntary manslaughter before a jury properly instructed as to her defense.

JAMES C. BONNER, Jr. (067400)
GEORGIA INDIGENT DEFENSE COUNCIL
985 Ponce de Leon Avenue
Atlanta, Georgia 30306
(404) 894-2595

NICHOLAS A. LOTITO (458150)
GEORGIA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
918 Ponce de Leon Avenue, NE
Atlanta, GA 30306
(404) 688-2000

JILL M. SPECTOR
NATIONAL CLEARINGHOUSE FOR THE DEFENSE OF BATTERED WOMEN
125 South 9th Street, Suite 302
Philadelphia, Pennsylvania 19107
Telephone (215) 351-0010

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of March, 1997, I mailed first-class copies of the within Brief of *Amici Curiae* to:

Hon L. Elizabeth Lane
Attorney for Appellant
PO Box 7983
Macon, GA 31209-7983

Hon. Stephen Andrew Bradley
Assistant District Attorney
Ocmulgee Judicial Circuit
Baldwin County Courthouse
201 West Hancock St.
Milledgeville, GA 31061

JAMES C. BONNER, Jr. (067400)